No. 169.

Brf. of Howard & Earle for Appellees.

In the Supreme Court of the United States.

OCTOBER TERM, 1901.

Filed Jan. 30, 1902.

THE UNITED STATES, APPELLANT,
v.
JOSE ISABEL MARTINEZ, ET AL. } No. 169.

APPEAL FROM THE COURT OF PRIVATE LAND CLAIMS.

BRIEF ON BEHALF OF THE APPELLEES.

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Statement.

This appeal on behalf of the United States is from the decision of the Court of Private Land Claims, granting a decree in favor of the appellees for a money judgment against the United States on account of patents granted by it to 1,856.73 acres of land within a grant, the title to which, in the appellees, said Court had previously confirmed.

The only question for consideration is the right of the Court to render the said judgment.

The entire grant in question was complete and perfect at the date of the treaty of cession, and therefore the title and ownership of the property were vested absolutely in the grantees of the former government, and the appellees were the owners of the property in whole or in part.

Argument.

Congress, in giving the privilege to sue the United States, did not by the act attempt, or intend, to limit the rights of the individual whose land had been sold by the United States to the technical narrow confines suggested by counsel for the appellant, and the fact that in this case it was, as shown, necessary to dispose of the contention set forth in the original case, involving the boundaries and limits of the grant, before the present question could have been discovered, must relieve the claimant from a failure to have alleged that which required the functions of the Court and the United States Survey Office to determine. The defense of the appellee is based on the contention that the very parties whom the Court has held was entitled to the property within the limits and terms of the decree, were justly divested by the United States of a portion of their property, because of a failure to discover such fact when the suit was instituted, to establish their title.

At no time could the patentees whose title was derived from the United States, have been compelled to protect their title; in fact the service on them of a copy of the appellee's petition with a citation, would have been useless. They were not, nor could they have been affected by the decree, being, as they were, fully protected by the 14th Section

of the Act creating the Court of Private Land Claims. The effect of the decree of the Court was not alone to establish the grant therein described but to confirm the title of the vendees of the United States within the boundaries established, thereby divesting the claimants of all rights to valuable property included within their grant, a money judgment for which was fairly contemplated by the 14th Section of the said act.

In cases of this nature this Court has held (U. S vs. Moore) that it is "called on to decide according to the rules governing a Court of Equity."

The subject of laches is disposed of completely (see deposition of G. Hill Howard, Record, p. 8), and it is submitted that no rule of equity can be advanced to support the contention of the appellee that the claimants have under the facts been precluded from recovery for land of which they have been divested by the act of United States in granting patents to other parties.

The analogy of this case to the theory of indemnity, as expressed in the case of the U. S. vs. Moore, 12 How., 209, 223, is faint beyond recognition, in the Moore case the obscurity and antiquity of the transaction required the Court to bar the complaint on legal presumption founded on lapse of time; and had the claimant made the vendees parties to this action for the reason cited in the case of U. S. vs. Moore, referred to in brief of appellee, p. 19, it could have availed nothing for they were not and could not have been affected by the judgment, and, therefore, were not necessary parties.

Further, the necessity cited by the Court for making the U. S. vendees parties in the case of U. S. vs. Moore, p. 223, does not even exist in the case at bar for the reason that the title is not in dispute (as in the Moore case), to the contrary, the

title of the United States vendees is expressly confirmed by the decree and the Eighth Sec. of the Act, creating the Land Court, the sole question here being the right of the claimants to a money judgment for the property of which they have been by the United States divested.

It is respectfully submitted that the judgment rendered by the Court of Private Land Claims in this case should be confirmed.

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Counsel for Appellees.